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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 318

DI GIORGIO FRUIT CORPORATION, a corporation; and DI GIORGIO WINE COMPANY, a corporation,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Petition for a Writ of Certiorari to United States Court of Appeals for the District of Columbia Circuit

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NATIONAL LABOR RELATIONS BOARD,

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Petition for a Writ of Certiorari to United States Court of Appeals for the District of Columbia Circuit

Di Giorgio Fruit Corporation and Di Giorgio Wine Company pray that a writ of certiorari issue to review, in part, a decision of the United States Court of Appeals for the District of Columbia Circuit issued on June 21, 1951 (R. 191), which affirmed the Board's order dismissing an unfair labor practice complaint as against certain unions. The part of the decision of which review is sought is that part which affirmed the Board's order of dismissal as against Kern County Farm Labor Union, Local 218, National Farm Labor Union, AFL.

OPINIONS BELOW

The opinion of the Court of Appeals (R. 191) is not yet officially reported. The findings of fact, conclusions of law and order of the National Labor Relations Board (R. 174) are reported at 87 NLRB 720.

JURISDICTION

The judgment of the Court of Appeals was entered on June 21, 1951 (R. 204). The jurisdiction of this Court is invoked under Section 10(e) of the National Labor Relations Act, as amended, and under 28 USC 1254 (1).

QUESTION PRESENTED

A local union whose membership was comprised exclusively of striking agricultural laborers picketed a farmer's customers and thereby induced employees of the customers to engage in concerted refusals to handle the farmer's products. The question presented is whether the union was a "labor organization" within the meaning of Section 8(b)(4)(A) of the National Labor Relations Act, which makes it unlawful for "a labor organization or its agents" to engage in conduct like that above mentioned.

THE STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended, (61 Stat. 136, 29 USC, Supp. III, 151, et seq.) are set forth in the Appendix. They are Section 8(b)(4)(A), which characterizes as unfair labor practices certain kinds of conduct on the part of "a labor organization or its agents," Section 2(5) which defines a "labor organization" as an organization "in which employees participate" and Section 2(3) which contains definitive provisions relative to the term "employee."

STATEMENT

A consolidated complaint was issued by a regional director of the Board charging four unions with violations of section 8(b)(4)(A) of the Act (R. 1-2). The four unions were Kern County Farm Labor Union, Local 218, National Farm Labor Union, AFL (hereinafter called the *Farm Union*), International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 87 (hereinafter called *Teamsters Local 87*), Distillery, Rectifying and Wine Workers International Union, Local 45 (hereinafter called the *Wine Workers Union*), and Wholesale Delivery Drivers and Salesmen's Union, Local 848, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter called *Teamsters Local 87*).

After hearing, the Board found the Wine Workers Union and Teamsters Local 848 guilty of violating section 8(b)(4)(A) and issued a cease and desist order against them (R. 177-179). This aspect of the case was not reviewed by the court below and review thereof is not sought in this Court.

In the case of Teamsters Local 87, the Board dismissed the complaint upon the ground that the activities of that union were "primary in character." (R. 176). This aspect of the case was reviewed by the court below and the Board's decision affirmed, but review thereof is not sought in this Court.

In the case of Farm Union the Board dismissed the complaint upon the ground that Farm Union was not a "labor organization" or the "agent" of a labor organization (R. 175-176), and this holding was affirmed below by a divided court. We do not seek review in this Court of the question whether Farm Union acted as the "agent" of a labor organization. However, as heretofore indicated, we do seek review of the question whether Farm Union itself was a "labor organization."

The facts, as found by the trial examiner, whose findings were adopted by the Board, may be summarized as follows:

Di Giorgio Fruit Corporation, hereinafter called the "Fruit Corporation," is engaged in growing and selling vegetables and fruits (R. 116). It owns and operates several ranches, among which is one of about 11,000 acres near Bakersfield, California, known as Di Giorgio Farms (R. 116-117).

Di Giorgio Wine Company, hereinafter called the "Wine Company," is a wholly owned subsidiary of the Fruit Corporation (R. 117); it operates a winery located upon land leased from the Fruit Corporation and which is a part of the Di Giorgio Farms property (R. 118).

Shortly prior to October 1, 1947, Farm Union and Teamsters Local 87 demanded of the Fruit Corporation that it bargain collectively with certain units of agricultural laborers in its employ (R. 123). The unit which Farm Union claimed to represent was comprised of harvest and field workers, irrigators, and packing shed workers (R. 122). The unit claimed by Teamsters 87 was comprised of truck drivers and helpers (R. 123).

The Fruit Corporation refused to recognize either union and on October 1, 1947, the two unions established, and they thereafter maintained, joint picket lines about the ranch and winery property (R. 123-124). In addition to maintaining these picket lines, Farm Union engaged in certain activities about to be described and which were alleged in the complaint to constitute unfair labor practices.

The Italian Swiss Colony Incidents

In the late afternoon of Thursday, February 26, 1948, a shipment of wine from Di Giorgio (i.e., from the Wine Company) to Italian Swiss Colony arrived by tank car at the latter's Clovis plant (R. 138). The Farm Union thereupon established a picket line at the plant, and the next morning the employees of Italian Swiss Colony refused to cross the picket line to report for work (R. 138). The car thereafter was unloaded by supervisory personnel and the pickets departed (R. 138).

On March 4, 1948, twelve more tanks cars of wine from Di Giorgio arrived at the Italian Swiss Colony plant (R. 139). Again, the Farm Union established a picket line at the plant (R. 139). Italian Swiss Colony employees refused to work behind the picket line and walked out (R. 139). The picket line was maintained, and Italian Swiss Colony employees remained away from work, through March 10 (R. 140). Most of the wine having then been unloaded by supervisory employees the pickets left and on the morning of March 11, the Italian Swiss Colony employees returned to work (R. 140).

In the foregoing incidents, the Farm Union had the cooperation of the Wine Workers Union, which represented Italian Swiss Colony employees and which instructed them not to work behind the picket line (R. 138-139).

The Safeway Stores Incident

On April 29, 1948, two truckloads of potatoes left Di Giorgio Farms for Safeway's distribution warehouse at Los Angeles (R. 141). The trucks, which were owned and operated by independent trucking concerns, were followed to Los Angeles by three representatives of Farm Union (R. 141). Upon arrival of the trucks at the Safeway warehouse, one of the Farm Union representatives spoke to a Safeway supervisory employee, asked that the potatoes not be unloaded and threatened a picket line if unloading should proceed (R. 141). He repeated his threat to the supervisory employee's superior over the telephone (R. 142). When employees of one of the truckers started unloading potatoes, picketing was commenced and drivers employed by Safeway then refused to drive their trucks through the picket line (R. 142-143). This state of affairs continued for about two hours until the employees of the independent trucker started reloading the potatoes on the truck for the purpose of removing them from the premises (R. 143). The pickets were then withdrawn, and the Safeway drivers resumed their work (R. 143).

In the foregoing affair the Farm Union had the cooperation of Teamsters Local 848, which represented the Safeway drivers and which took the position that Safeway drivers would not drive their trucks from the warehouse premises until the potatoes were removed (R. 142-143).

Farm Union's Membership

While the membership of Farm Union was open, not only to agricultural laborers, but also to "allied workers" such as commercial packing house employees (R. 121), it had not yet gotten around to organizing anyone other than Di Giorgio employees and at the time of the above mentioned incidents at Italian Swiss Colony and Safeway Stores, Inc. its membership was comprised exclusively of Di Giorgio's striking agricultural workers (R. 121).

The Board's Decision

Upon the basis of the foregoing facts, the Board held both the Wine Workers Union and Teamsters Local 848 guilty of violating section 8(b)(4)(A) of the Act—the Wine Workers Union because of its participation in the Italian Swiss Colony incidents (R. 160, 176) and Teamsters Local 848 because of its participation in the Safeway incident (R. 161, 176)—and a cease and desist order was issued against them (R. 177, 178).

However, Farm Union was let off. The complaint was dismissed as to it (R. 179), upon the ground that it was not a labor organization or the agent of a labor organization (R. 175-176), and it therefore is free under the decision to continue instigation of secondary strikes and boycotts aimed at Di Giorgio.

It has been and is our position, in support of which we rely on this Court's decision in *Phelps-Dodge Corporation v. National Labor Relations Board,* 313 U.S. 117, that section 2(5) of the Act, in defining a labor organization as an organization "in which employees participate," uses the term "employees" in its

generic sense; and that although by reason of section 2(3) an "individual employed as an agricultural laborer" is not to be considered an "employee" in relation to that employment, he nevertheless is an employee in relation to other potential employments and hence is an employee in the generic sense in which the term "employees" is used in defining "labor organization."

The Board tacitly rejected the foregoing reasoning and adopted (R. 175) the following finding of the trial examiner (R. 121):

> "Kern County Farm Labor Union, Local 218, affiliated with National Farm Labor Union A. F. of L., is an organization which was formed for the purpose of representing farm and allied workers in matters of collective bargaining. Its membership is composed exclusively of persons employed by Fruit Corporation as agricultural laborers and, for reasons which appear below, it is not a labor organization within the meaning of the Act."

The reasoning to which the foregoing finding referred as appearing "below" was that section 2(5) of the Act defines a labor organization as one "in which employees participate," that section 2(3) provides that the term "employee" does not include "any individual employed as an agricultural laborer," and that a local union comprised exclusively of agricultural laborers therefore is not a labor organization (R. 145-146).

In contrast, while holding that Teamsters Local 87 had not violated the Act because it had been guilty only of "primary" activities, the Board held that it was a "labor organization" because in addition to Di Giorgio's agricultural laborers "it also numbers among its members employees of other employers in Southern California" (R. 176).

Decision of the Court of Appeals

The Court of Appeals, in a two to one decision, affirmed the Board. The majority of the Court held (R. 193):

> "* * * according to the language of the Act 'employees' must participate in an organization if it is to be deemed a labor organization within the meaning of the statute, and agricultural laborers are not included within the statutory term 'employees.' Hence, so far as the words of the statute are concerned the Farm Union, being composed exclusively of agricultural laborers, is not a labor organization within the meaning of the statute, and so a secondary boycott by the Farm Union would not fall within the prohibitions of the statute."

In the foregoing connection, the majority held that the provision in section 2(3) of the Act that the term "employee * * * shall not include any individual employed as an agricultural laborer" is a "specific delimiting provision" which qualifies the term "employee" wherever and however used in the Act (R. 195). The majority distinguished this Court's decision in the *Phelps-Dodge* case upon the ground that this Court was not there confronted with any such "specific delimiting provision" and also upon the ground that this Court there was dealing with two different sections of the Act rather than with "two paragraphs in the same section." (R. 195-196).

Regarding the Congressional intent as revealed by the legislative history of section 8(b)(4)(A), the majority conceded that "Congress was undoubtedly concerned with the plight in which secondary boycotts place farmers; and it effectively protected farmers from the sort of boycotts which it then had in mind, boycotts by teamsters, unloaders, etc."; but that the terms of the statute did not go so as to protect farmers against such activities upon the part of farm labor unions, and that it was not a proper function of the court to speculate as to what Congress would have done if it had "noted" the latter problem (R. 197).

Judge Miller dissented (R. 200). In respect to the question whether Farm Union was a labor organization, he stated simply (R. 200):

> "I think, for the reasons advanced in argument by the Petitioner and *amici curiae*—which are summarized in the majority opinion—that the Farm Union should be regarded as the type of union to which the Act applies."

SPECIFICATION OF ERRORS TO BE URGED

The Court below erred:

1. In failing to hold that the definitive provisions of section 2(3) of the Act relative to the term "employee" contemplate use of that term in more than one sense, including the generic; and that the exclusions set forth in that section do not mean that the individuals mentioned are to be considered non-employees in every relationship and for every purpose;

2. In failing to hold that section 2(5) of the Act, in defining a "labor organization" as one in which "employees" participate, uses the term "employees" in its generic sense;

3. In failing to hold that while an individual employed as an agricultural laborer is not to be considered an "employee" in relation to that employment, he nevertheless is an "employee" in relation to other, non-exempt, employments and is therefore an employee in the generic sense in which the term "employees" is used in section 2(5)'s definition of a "labor organization";

4. In holding that Congress in enacting section 8(b)(4)(A) of the Act intended to protect farmers against inducement of a refusal by industrial or commercial employees to handle his products only to the extent that a non-agricultural union is responsible for such inducement, and that it did not intend to protect him against inducement of such a refusal by the farm labor union primarily involved;

5 In holding that Farm Union was not a "labor organization" within the meaning of section 8(b)(4)(A).

REASONS FOR ALLOWANCE OF THE WRIT

The reasons why the Writ should be allowed are the following: (1) The question heretofore stated is one of general importance, and one of substance relating to the construction of a statute of the United States, which has not, but should be, settled by this Court; (2) The decision below is in conflict with the decision of this Court in *Phelps-Dodge Corporation v. National Labor Relations Board*, 313 U.S. 177; and (3) the decision below is in conflict with a prior decision of the Court of Appeals of the Fifth Circuit. More particularly:

I. The Question Is One of General Importance, and One of Substance Relating to the Construction of a Statute of the United States, Which Has Not, but Should Be, Settled by This Court.

The question whether a union of agricultural laborers or other individuals engaged in excluded employments is a "labor organization" within the meaning of the Act is one upon which this Court has never passed. Nor, excepting for the Court of Appeals in the instant case, has any other court passed upon that question.[1]

Nevertheless, the question is one which is presented frequently in the administration of the Act, particularly since enactment of the 1947 amendments.[2] It is a question upon which General

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[1]In *National Labor Relations Board v. Edward G. Budd Mfg. Co.* (C.C.A. 6th), 169 F.(2d) 571, cert. den. 335 U.S. 908, it was contended that the Foreman's Association of America was not a "labor organization" because "supervisors are not employees under the Labor Management Relations Act." The court disposed of this contention with the statement that the Association "admits to membership persons who are not supervisors but who are employees within the meaning of the amended Act" (169 F.(2d) at 576); the court did not pass upon the question which would have been presented had the membership of the Association been limited to supervisors.

[2]See, e.g., *Matter of John Hancock Mutual Life Insurance Co.*, 92 N.L.R.B. No. 27, some aspects of which were reviewed in *John Hancock Mutual Life Insurance Co. v. National Labor Relations Board* (C.A.D.C.), decided July 5, 1951, and not yet officially reported.

Counsel and the Board disagreed in the instant case and upon which the court below likewise was divided. Indeed, the Board itself has since evidenced doubt as to the soundness of its position.[3] A controlling determination of the question is essential to orderly and proper administration of the Act, is of vital importance to farmers and other employers dealing with employees in excluded employments, and is of concern to Congress in its evaluation of the effect of the 1947 amendments of the Act and of the need for further amendment.

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[3]In *Matter of John Hancock Mutual Life Insurance Company*, supra note 2, an employer refused employment in a non-supervisor position to a man who formerly had been employed as a supervisor, had been active in organizing a supervisors' union, and had testified for the union in an abortive representation proceeding. The employer was charged with violating section 8(a)(4) of the Act upon the ground that he had discriminated against the man because the latter had testified in the representation proceedings, and with violating section 8(a)(3) upon the ground that by refusing the man employment he had discouraged membership in a "labor organization." The trial examiner found the employer guilty of violating section 8(a)(4), but in respect to section 8(a)(3) found as follows:

> "The General Counsel's contention that the refusal to hire also constituted violation of Section 8(a)(3) of the Act is also rejected. The Union is not a labor organization within the meaning of the Act since its membership is confined to supervisors of the Respondent. Accordingly, it could not be found that the Respondent failed and refused to hire Kohen in order to discourage membership in a *labor organization*."

The Board declined to adopt the foregoing finding and conclusion, with the following explanation:

> "As the policies of the Act will as well be effectuated by a remedial order based upon a limited finding that the Respondent in this case violated Section 8(a)(4) of the Act, we find it unnecessary to determine whether or not the refusal to hire Kohen also violated Section 8(a)(3). Accordingly, we do not adopt the Trial Examiner's findings and recommendation respecting the 8(a)(3) allegation, but we shall, nevertheless, dismiss the complaint to that extent."

There was no doubt that the membership of the union was confined to supervisors. The Board's reluctance to adopt the trial examiner's conclusion that it was not a labor organization can be ascribed only to doubt on the part of the Board as to the validity of the position which it had taken in the present case.

IMPORTANCE IN THE ADMINISTRATION OF THE ACT

As heretofore noted, the Board and the majority of the court below, held that Farm Union was not a labor organization because its membership was comprised exclusively of individuals employed as agricultural laborers (or, to be more accurate, individuals who had been working as agricultural laborers, but who were on strike). In contrast, the Board held that Teamsters Local 87 was a labor organization because its membership also included employees of commercial trucking concerns. Under the Board's reasoning, if two of the Farm Union's striking members had secured jobs in a commercial packing house, Farm Union would thereupon have become a "labor organization" and its conduct in inducing secondary boycotts of Di Giorgio would have become unlawful. If the two workers had then lost their jobs in the commercial packing house, Farm Union then would have ceased to be a labor organization and its conduct would have reverted to legality. The lawfulness of Farm Union's conduct thus was made to depend upon a factor in no way germane to the policy which section 8(b)(4)(A) was designed to effectuate.

The Board's reasoning, while applied in the instant case to a union of agricultural laborers, would apply as well to a union of supervisors, railroad employees, or other individuals engaged in excluded employments.[4]

And while we are concerned in the instant case only with an alleged violation of section 8(b)(4)(A), the same reasoning would apply as well to all of the other subdivisions of Section 8(b), for the various types of conduct specified in the several subdivisions of that section are forbidden only to a "labor organization or its agents."[5] In short, under the Board's decision any

[4]Section 2(3) not only excludes agricultural laborers from the meaning of the term "employer" but also excludes, in substantially the same terms, supervisors, railroad workers and various other categories.

[5]The same reasoning also would apply to section 303 of the Labor Management Relations Act, 1947 (Title 29 U.S.C. sec. 187) for its

union of individuals in excluded employments is free to interfere in protected employment relationships in any or all of the ways forbidden to other unions by section 8(b).[6]

Nor is the impact of the decision below limited to section 8(b). Affected also are various other provisions of the Act which use the term "labor organization."[7] And also affected are the several provisions which use the term "employee" or "employees,"[8] for

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language is identical in all material aspects with that of section 8(b) and the term "labor organization" as used therein has the same statutory meaning (Title 29 U.S.C. sec. 158).

[6]Thus, although section 8(b)(1) renders it an unfair labor practice for a "labor organization * * * to restrain or coerce * * * employees in the exercise of the rights guaranteed in section 7," Farm Union would have been free under the Board's decision to commit physical violence upon Italian Swiss Colony employees who persisted in working behind the picket line.

Section 8(b)(2) renders it an unfair labor practice for a "labor organization * * * to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3)." Under the Board's decision, Farm Union would nevertheless be free to picket a commercial packing house on behalf of an affiliated local to force the packing house to hire only members of the affiliated local and to discharge non-members.

The foregoing examples suffice for purposes of illustration.

The majority of the court below stated that the substance of most of the restrictions contained in section 8(b) is such that they cannot be applied to a union of farm laborers or other persons in excluded employments without nullifying the exclusions. This statement ignores the fact, which is demonstrated by the present case and by the other examples above set forth, that the activities of a union whose membership is comprised exclusively of individuals in excluded employments are not necessarily directed at such individuals only, but may be (as they were in the present case) directed at other employees and at employment relationships having the full protection of the Act.

It is true that under the Act Farm Union may with impunity interfere in agricultural employment rights and relationships (as, for example, by forcing a farmer to discharge an agricultural laborer because he is not a union member). But this is not because of any special license granted a farm labor union, but because agricultural employment rights and relationships are not protected by the Act; a teamsters union or any other union would have the same license.

[7]See secs. 8(a)(1), 8(a)(3), 9(b), 9(c), 9(e), 9(f), 9(g), 9(h), 10(c), 10(l), 14(a), 14(b).

[8]See secs. 7, 8(a)(2), 8(a)(3), 8(a)(4), 8(a)(5), 9(a), 9(b), 9(c), 9(e), 9(f), 9(g), 9(h), 10(c), 10(l), 14(a); and see *International Rice Milling Co. v. National Labor Relations Board* (C.A. 5th), 83 F.(2d) 21, discussed infra, page 24.

the very basis of the decision is that individuals employed as agricultural laborers or in other excluded employments are not to be considered "employees" in any sense or for any purpose. To illustrate:

In *Phelps-Dodge Corporation v. National Labor Relations Board*, 313 U.S. 117, this Court held that an individual on strike who had obtained "regular and substantially equivalent employment" elsewhere[9] nevertheless was an "employee" within the meaning of the provision in Section 10(c) empowering the Board to order reinstatement of "employees." Suppose that the other employment which the individual in question had obtained was employment as an agricultural laborer. Under the reasoning of the Board in the present case, this Court would have been compelled to hold that the individual in question thereby was deprived of his status as an employee within the meaning of Section 10(c).

Suppose that some of Di Giorgio's striking agricultural laborers had applied for a job in a commercial packing house and had been refused employment because of their membership in Farm Union or in the Teamsters' Union. Under the Board's reasoning the packing house operator would not have been guilty of the unfair labor practice of interfering with "employees" in the exercise of their right of self-organization (see sec. 8(a)(1)) because striking agricultural laborers are not "employees." Nor, in the case of those individuals who were members of Farm Union, would the packing house operator have been guilty of the unfair labor practice of discouraging membership in a "labor organization" by "discrimination in regard to hire" (see sec. 8(a)(3)) because Farm Union was not a labor organization. True, the individuals

[9]Section 2(3) impliedly excludes from the meaning of the term employee "any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice" and who has obtained "other regular and substantially equivalent employment." For discussion of the *Phelps-Dodge* case, see page 19, infra.

in question were potential packing house employees, but the Board holds that until and unless some of them actually secure packing house jobs they are agricultural laborers, that they therefore are not "employees" in any sense of that term and their union, if it currently has no members other than agricultural laborers, is not a "labor organization."

Suppose that this same commercial packing house operator, being desirous of insuring that none of his existing employees would join the Farm Union, were to threaten to discharge any of them who did so. According to the Board's decision, he nevertheless would not be guilty of the unfair labor practice of coercing his employees in the exercise of their right to join a "labor organization" (see sec. 8(a)(1); sec. 7) because the Farm Union, being comprised at the moment of agricultural laborers, is not a "labor organization."

The basic error of the decision below lies in its misconstruction of the definitive provisions of section 2(3) relative to the term "employee." More particularly the error lies in treating the exclusory provisions of that section as if they were intended to exclude *individuals* from the coverage of the Act, rather than *employments*. The wording of the exclusory provisions may be inept, but it nevertheless is clear that Congress did not intend to say that an individuals' current status as an agricultural, railroad or domestic worker excludes him in all respects and in all relationships from the benefits and restrictions of the Act. Congress did not intend to exclude the individual from the coverage of the Act, but intended only to exclude the employment. In the words of the Senate Committee Report (Report No. 1184, 73d Congress, 2d Session, p. 1) on Senate bill 2926, the effect of the exclusion here in question was that "the bill does not relate to employment * * * as an agricultural laborer."

The true meaning of the Act is that *no* individual has any rights thereunder in respect to employment in agricultural labor or other

excluded employments. On the other hand, an individual employed as an agricultural laborer has the same rights as any other individual in respect to non-excluded employments. If a truck driver employed by a commercial trucking concern were to apply for a job driving a truck as an agricultural laborer on a farm and were to be rejected because of his membership in the Teamsters' Union, he and his union would be without recourse under the Act. On the other hand, if an individual employed as an agricultural laborer were to apply for a job driving a truck for a commercial trucking concern and were to be rejected because of his union membership, he would be entitled to the full protection of the Act.

In short, the provision in section 2(3) that the term "employee * * * shall not include any individual employed as an agricultural laborer" does not mean that such an individual is without status as an "employee" in relation to covered employments but means simply that no individual is to be considered an "employee" in relation to agricultural labor. An individual employed as an agricultural laborer is not an "employee" in relation to that employment, but he is an "employee" in relation to other employments (he is a member of the potential working force of industry generally) and hence is an employee in the generic sense in which the term "employees" is used in defining a labor organization. In holding otherwise, the Board and the majority of the court below committed a basic error affecting the interpretation and administration of numerous provisions of the Act.

IMPORTANCE TO AGRICULTURE

The farmer, due to the perishable nature of his products is peculiarly vulnerable to secondary boycotts. He has been one of their most frequent victims and, indeed, probably has been *the* most frequent victim of the product boycott. In this connection we need refer only to the Congressional debates on the 1947

amendments, for they were replete with illustrations of secondary boycotts directed against farmers.[10] Indeed the farmer's need for relief was one of the main considerations mentioned in support of the enactment of sections 8(b)(4)(A) and (B) and of the sister provision in section 303 of the Labor Management Relations Act (Title 29 U.S.C. sec. 187) permitting recovery of damages.[11] It is patent, therefore, that the question of how far the Act goes in affording the farmer protection is one of great importance to him. It also, of course, is a question of importance to farm labor unions.

Under the decision below, the farmer has the protection of the Act only as against a union of commercial or industrial employees which happens to become involved in the boycott. No protection is afforded against the farm union primarily involved and which is responsible for inducing the boycott unless it happens to have some members working in covered employments; it is free under the decision below to continue its picketing and

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[10]See Cong. Rec. 3424, 3432.

[11]Section 303 was enacted as a result of amendments to Senate Bill 1126 proposed in a supplemental committee report and on the floor of the Senate. Referring to secondary boycotts and jurisdictional strikes, the supplemental report said that "it is the small employer * * * and the farmer or farm trucker who are the main victims of this type of racketeering union activity" (Sen. Comm. Rep. No. 105, Supplemental Views, 80th Cong. 1st Sess., p. 54). In explaining the amendment on the Senate Floor, Senator Ball stated (93 Cong. Rec. 4838):

> "As I said before, farm producers and small businesses and their employees are the main victims of secondary boycotts, jurisdictional strikes, and organizational boycotts * * *. It is such persons and their rights that we are trying to protect."

The amendment as originally proposed and a substitute amendment later offered by Senator Taft (93 Cong Rec. 4838) did not refer to "labor organization" but prohibited "any person" from engaging in the outlawed conduct and hence clearly would not have permitted a farm union to escape liability on the ground that it was not a "labor organization." Thereafter the term "labor organization" was substituted for "person" for the sole purpose of avoiding imposition of liability on individual employees (93 Cong. Rec. 4843). These facts are recited in somewhat more detail in the opinion of the court below (R. 194).

other methods of instigation whenever and wherever it can follow or locate the farmer's products.

In the present case, for example, if Di Giorgio had been unable to show that the Wine Workers Union and Teamsters Local 348 committed overt acts in aid of Farm Union, Di Giorgio would have been entirely without remedy. Even as it was Di Giorgio could secure relief against those two unions only after the damage in each instance had been done, and Farm Union was and is free to continue picketing at Italian Swiss Colony, Safeway Stores, or any other customer's place of business. Such picketing may be, and usually is, entirely effective even without overt help from any other union.

IMPORTANCE TO CONGRESS

The court below said that "Congress was undoubtedly concerned with the plight in which secondary boycotts place farmers; and it effectively protected farmers from the sort of boycotts which it then had in mind, boycotts by teamsters, unloaders, etc." (R. 197.) However, the court stated in substance that the terms of the statute did not protect farmers against such activities on the part of farm unions and that it was not the court's function to speculate as to what Congress would have done about it "if Congress had noted the problem"[12] (R. 197).

[12]We do not agree that Congress did not have in mind secondary activities of farm unions in support of their efforts to organize agricultural laborers, or that Congress did not intend to protect farmers from such activities. Senator Ball, in offering the amendment which resulted in enactment of section 303, stressed the farmer's need for protection against "organizational boycotts" (see note 11 supra). When Congress enacted section 303 with wording identical in its material aspects to that of section 8(b)(4), it undoubtedly thought that it was giving the farmer such protection. Thus, when Senator Aiken sought to enlarge section 303 to allow farmers injunctive as well as monetary relief (93 Cong. Rec. 4860), Senator Pepper, referring to section 8(b)(4) and to the provisions of section 10(1) relative to injunctive relief at the instance of the Board, said that "the matter is not left without remedy in the main bill itself" (93 Cong. Rec. 4862); and Senator Morse, referring to the same provisions, said that "farmers are going to find that, without regard to class legislation, a measure has been passed providing a procedure that will give them the remedies they need" (93 Cong. Rec. 4863).

If the decision below is correct, then Congress almost wholly failed of its admitted purpose of protecting farmers from "boycotts by teamsters, loaders, etc." Such a boycott—that is, a refusal by teamsters, loaders, or other commercial or industrial employees to handle the farmer's products—invariably is instigated by the union representing or seeking to organize the farmer's employees. As we have already noted, if the farmer is without remedy against that union, then he is without any effective remedy whatever, and the court below was wrong in saying that the Act affords farmers effective protection against such boycotts.

The fact is, therefore, that if the decision below is correct, Congress almost wholly failed in its effort to afford farmers protection against secondary boycotts. The matter plainly is one of concern to Congress.

II. The Decision Below Is in Conflict with the Decision of This Court in Phelps-Dodge Corporation v. National Labor Relations Board.

In *Phelps-Dodge Corporation v. National Labor Relations Board*, 313 U.S. 177, this Court had before it a question as to the power of the Board to reinstate a striking employee who had obtained "other regular and substantially equivalent employment." Section 10(c) of the Act provides for re-instatement of "employees." Section 2(3) of the Act impliedly excludes from the meaning of the term "employee" a striking employee who has obtained "othher regular and substantially equivalent employment." The employer argued that by reason of this implied exclusion, the individual in question was not an employee within the meaning of section 10(c). This Court held otherwise, characterizing the employer's argument as "a bit of verbal logic from which the meaning of things has evaporated." (313 U.S. at 191).

In stating the problem, the Court, speaking of the provisions of section 2(3) and section 10(c), said (313 U.S. at 190):

> "Merely as a matter of textual reading these Provisions in combination permit three possible constructions: (1) a

curtailment of the powers of the Board to take affirmative action by reading into § 10(c) the restrictive phrase of § 2(3) regarding a worker 'who has not obtained any other regular and substantially equivalent employment'; (2) a completely distributive reading of § 10(c) and § 2(3), whereby the factor of 'regular and substantially equivalent employment' in no way limits the Board's usual power to require employment to be offered a worker who has lost employment because of discrimination; (3) an avoidance of this either-or reading of the statute by pursuing the central clue to the Board's powers—effectuation of the policies of the Act—and in that light appraising the relevance of a worker's having obtained 'substantially equivalent employment.' "

The Court held that the third alternative course was the proper one.

Regarding the term "employees" in § 10(c), the Court said (313 U.S. at 191):

> "* * * insofar as any argument is to be drawn from the reference to 'employees' in § 10(c), it must be noted that the reference is to 'employees', unqualified and undifferentiated. To circumscribe the general class 'employees', we must find authority either in the policy of the Act or in some specific delimiting provision of it."

The Court then held that neither § 2(3) nor any other provision of the Act contained "a comprehensive definition of 'employee' restrictive of § 10(c)." (303 U.S. at 191). On the contrary, the Court pointed out, § 2(3) begins with a provision that the "term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise * * *." The Court held that the implied exclusion of workers who have obtained "regular and substantially equivalent employment," while it qualifies the term "employee" as used at some points in the Act, does not qualify that term as used to designate the general class. In the words of the Court (313 U.S. at 192):

"The reference in § 2(3) to workers who have 'obtained regular and substantially equivalent employment' has a role consonant with some purposes of the Act but not one destructive of the broad definition of 'employee' with which § 2(3) begins."

Turning now to the present case, the reference to "employees" in section 2(5)'s definition of a labor organization, like the reference to "employees" in section 10(c), is "unqualified and undifferentiated." Furthermore, the wording of section 2(5) makes a far stronger case than even the wording of section 10(c) for the proposition that the term "employees" was intended to embrace "the general class." Section 10(c), in speaking of "reinstatement of employees," seems to contemplate a preexisting employment relationship and thus furnishes basis for argument that it uses the term "employee" in the narrow sense of an individual having a job with the particular employer involved. In contrast, section 2(5) contains no such basis for a restrictive construction. In speaking of an organization "in which employees participate," section 2(5) does not speak of individuals in relation to a particular employer or employment, but speaks clearly of the general class. That it was the general class that was meant is confirmed by a legislative history which shows that the definition of "labor organization" was intended to be all-embracing.[13]

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[13]The original bills referred to a "labor organization" as one "in which employees" participate but defined "employee" without any exclusion of agricultural laborers (S. 2926, 73d Cong. 2d Sess., pp. 3-4; 14 R. 8423, 73d Cong. 2d Sess., pp. 3-4); the wording of the bills therefore would not have permitted of the contention that a farm union is not a "labor organization." The subsequent history of the definition of "labor organization" was one of progressive enlargement to assure that it would cover not only all unions but also employee representation plans. See, e.g., S. 2926, as reported, 2d Senate print, p. 25; S. 1958, 74th Cong. 1st Sess., p. 3; S. 1958 as reported, 2d Senate print, p. 4.

As for the definition of the term "employee," the exclusion of "any individual employed as an agricultural laborer" was added by an amendment of the original Senate bill made in committee (S. 2926, as reported, 2d Senate print, p. 25), the effect of the amendment being that "the bill

Notwithstanding the foregoing, the majority of the court below held that section 2(5) uses the term "employees" in a restrictive sense which does not include individuals currently employed as agricultural laborers. This holding was based upon the ground that the reference to such individuals in section 2(3) is a "specific delimiting provision" which qualifies the term "employee" wherever and however used in the Act, and that an individual currently employed as an agricultural laborer therefore cannot be considered an "employee" for any purpose. In so holding, the majority endeavored to distinguished *Phelps-Dodge* on two grounds:

(1) First, it said in substance that the *Phelps-Dodge* case did not involve a "specific delimiting provision" like the exclusion in section 2(3) of "any individual employed as an agricultural laborer." The fact is that the *Phelps-Dodge* case likewise involved an exclusion in section 2(3) and that the exclusion therein involved, while expressed in a backhanded way, was just as specific and just as delimiting as the exclusion of individuals employed as agricultural laborers. This Court plainly held that such an exclusion does not qualify the term "employee" wherever and however used in the Act but that the question whether a particular provision of the Act uses the term "employee" in a general or a qualified sense is to be determined from the context and purpose of that provision.

2. Second, the court below considered it a significant difference that the *Phelps-Dodge* case involved "two different sections dealing with different topics" (i.e., sections 2(3) and 10(c)), whereas the present case involves "two paragraphs of the same section" (i.e. subsections 3 and 5 of section 2). But subsections 2(3) and 2(5) deal with different topics, just as do subsections

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does not relate to employment * * * as an agricultural laborer" (Sen. Comm. Rep. 1184, 73d Cong. 2d Sess., p. 1). There was no suggestion that by excluding agricultural employment from coverage it was intended to alter the concept of a labor organization as elsewhere defined.

2(3) and 10(c). As for the relative physical locations of the several provisions, subsection 2(5) was placed in the same section as subsection 2(3) for the obvious reason that both provisions are of a definitive nature, and not for the purpose of giving the term "employees" a different meaning in subsection 2(5) than in other sections of the Act.

The conflict between the decision below and this Court's decision in *Phelps-Dodge* is pointed up by reference once again to a hypothesis mentioned before. Suppose that in *Phelps-Dodge* the other employment obtained by the employee there in question had been employment as an agricultural laborer. We do not think that this difference from the facts as they actually existed would have been regarded by the Court as material. We do not think that the individual's current employment as an agricultural laborer would have deprived him of status as an "employee" under section 10(c). We think that this Court would have held that the individual in question, while not to be considered an employee in relation to employment as an agricultural laborer, was nevertheless an employee in relation to other potential employments and hence was a member of the "general class" to which section 10(c) refers.

By the same token, we submit that the fact that an individual is currently employed as an agricultural laborer does not deprive him of his status as a member of the general class to which section 2(5) refers by its use without qualification or differentiation of the term "employees." We submit that there is no significant difference between the *Phelps-Dodge* case and the present and that the decision below conflicts with this Court's decision in *Phelps-Dodge*.

III. The Decision Below Conflicts with a Prior Decision of the Court of Appeals of the Fifth Circuit.

There remains to be considered a decision of the Court of Appeals of the Fifth Circuit with which, we submit, the decision below is in conflict.

In *International Rice Milling Co. v. National Labor Relations Board*, 183 F.(2d) 21, a union picketing a rice mill in an effort to gain recognition induced railroad employees to engage in a concerted refusal to take railroad cars past the picket line. It will be recalled that section 8(b)(4)(A) renders it an unfair labor practice for a labor organization or its agents to induce "the employees of any employer" to engage in a strike or concerted refusal to perform services, etc. The railroad and its employees were subject to the Railway Labor Act and by the terms of section 2 of the National Labor Relations Act were excluded, respectively, from the meaning of the terms "employer" and "employee."[14] The court nevertheless found the union guilty of inducing a work stoppage by "employees" of an "employer" in violation of section 8(b)(4)(A), holding that those terms are used generically in that section and embrace a railroad and its employees notwithstanding the exclusions in section 2. That decision and the decision below thus are in square conflict upon the question whether those exclusions control the term "employee" wherever used and in whatever sense, or whether they permit use of the term "employees" at some points to embrace individuals engaged in excluded employments.

Another aspect of the foregoing case was reviewed by this Court in *National Labor Relations Board v. International Rice Milling Company, Inc.*, 341 U.S. 665. The Board, however, did not seek review of the above holding, but permitted it to stand unchallenged.[15]

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[14]Section 2(2) provides that the term "employer" shall not include "any person subject to the Railway Labor Act," and section 2(3) provides that the term "employee" shall not include "any individual employed by an employer subject to the Railway Labor Act."

[15]The Board's petition to this Court for certiorari stated in a footnote on page 2:

> "In addition to picketing in the vicinity of the plant of Kaplan, the employer involved in this dispute, the Union also picketed certain railroads in an effort to force them to cease transporting prod-

We do not mean to imply that we are satisfied that the court was correct in holding that inducement of railroad employees to refuse to perform services for their employer constituted a violation of section 8(b)(4)(A). It is strongly arguable that in relation to their railroad employment, the railroad workers were not statutory "employees" and that the union's interference with that exempted employment relationship did not constitute inducement of a refusal to perform services by "employees."[16] Whether the decision was right or wrong, however, a comparative analysis of that decision and the present demonstrates the need for a controlling determination by this Court of the effect upon section 8(b)(4) of the definitive provisions here under consideration.

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ucts to Kaplan and other rice mills. The court below, reversing the Board, held that by picketing the railroads the Union violated Sections 8(b)(4)(A) and (B). The Board does not seek review of the holding of the court below on this point."

[16]The provision of section 2(3) excluding railroad workers from the meaning of the term "employee" was added by the 1947 amendments and was explained in the Senate Report as follows (Sen. Rep. No. 105, 80th Cong., 1st Sess., p. 19):

> "The exemption of employees of employers subject to the Railway Labor Act is to make it perfectly clear that in providing remedies for unfair labor practices of unions and their agents it was not intended to include such employees."

As noted by the court below (R. 196), the Board argues from the foregoing that it was the Congressional intent to permit railroad unions (and, by analogy, farm unions) to interfere in employment relationships protected by the National Labor Relations Act, as, for example, by inducing a secondary strike by factory employees. This was not in fact the Congressional intent. The intent was, not to immunize railroad unions from liability for interference with employment rights and relationships governed by the National Labor Relations Act, but to make it plain that *railroad* employment rights and relationships were to be left as in the past to the Railway Labor Act. As explained by Senator Taft (93 Cong Rec. 6498):

> "I want to point out that railway labor has never been covered by the Wagner Act; it has always been covered by the Railway Labor Act * * *. We saw no reason to change that situation."

CONCLUSION

The question to which we have referred is one of general importance and of substance relating to the construction of the National Labor Relations Act. The rationale of the decision below is in conflict with the decision of this Court in *Phelps-Dodge Corporation v. National Labor Relations Board*, supra, and with the decision of the Court of Appeals of the Fifth Circuit in *International Rice Milling Company, Inc. v. National Labor Relations Board, supra.* For these reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

MARION B. PLANT,
Attorney for Petitioners.

Dated: San Francisco, California.
September 7, 1951.

(Appendix follows)

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. Supp. III, 151 et seq.) are as follows:

* * * * * * *

Sec. 2. When used in this Act—

* * * * * * *

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

* * * * * * *

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

* * * * * * *

Sec. 8. (a) * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided,* That this

paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a);

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather

than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: *Provided,* That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act;

(5) to require of employees covered by an agreement authorized under subsection (a)(3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected; and

(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed. * * *

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Van Arkel, *An Analysis of the Labor Management Relations Act, 1947*, Practicing Law Institute (1947), p. 2	7
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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 318

DI GIORGIO FRUIT CORPORATION, A CORPORATION, AND DI GIORGIO WINE COMPANY, A CORPORATION, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. 191-199) is not yet officially reported. The findings of fact, conclusions of law, and order (R. 174-179, 108-174) of the National Labor Relations Board are reported at 87 NLRB 720.

JURISDICTION

The decision and judgment of the court below were entered on June 21, 1951 (R. 191, 204). The petition for a writ of certiorari was filed on September 13, 1951. The jurisdiction of this Court is invoked under 28 U. S. C. 1254, and under Section 10 (e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Whether a union composed exclusively of agricultural laborers, who are denied the status of employees by Section 2 (3) of the Act and can receive no benefits under the Act, is a "labor organization" "in which *employees* participate" within the meaning of Section 2 (5) of the Act, so as to subject it to the restraints imposed upon such labor organizations by Section 8 (b) (4) (A) of the Act.

STATUTE INVOLVED

The pertinent provisions of the Labor-Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. IV, 141, *et seq.*), are set forth in the Appendix, *infra,* pp. 19-24.

STATEMENT

On a large ranch of about 11,000 acres known as Di Giorgio Farms (R. 116-117), Di Giorgio Fruit Corporation produces fruits and vegetables, employing about 1,500 agricultural workers in this operation (R. 122). The working force is composed, first, of harvest and field workers, irrigators, and packing shed workers, and second, of truck drivers and their helpers (R. 122).

In 1947 an attempt to organize the first group of workers was begun, resulting in the formation of Kern County Farm Labor Union, Local 218, herein called Farm Union, affiliated with National Farm Labor Union, AFL (R. 121, 122-123). The membership of Farm Union was composed exclusively of agricultural laborers of the Fruit Corporation employed in the fields and sheds (R. 121, 145). As a result of the organizational campaign, Farm Union claimed that more than 1,100 of Fruit Corporation's workers became members (R. 123).

About the same time, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 87, AFL, herein called the Teamsters, began to organize the truckers and helpers employed as agricultural laborers at Di Giorgio Farms, whom Farm Union did not seek to represent (R. 122-123). Teamsters claimed as members "almost the entire" group of these drivers and helpers (R. 123).

Farm Union and Teamsters requested Fruit Corporation to bargain collectively with them as representatives of the agricultural workers, but the demand for recognition was rejected (R. 123). Subsequently, because of the status of the workers as "agricultural laborers," the Board refused to process petitions for representation filed by the unions, and the General Counsel of the Board refused to issue a complaint against Fruit Corporation for refusing to bargain based on charges filed by the

unions (R. 125). Meanwhile, on October 1, 1947, the workers struck to compel recognition (R. 123). A joint picket line of Farm Union and Teamsters was established at each point where a private road from Di Giorgio Farms joined a public road (R. 123-124). In addition, on several occasions during the strike, members of Farm Union, but not Teamsters, followed truckloads of produce or cars of wine from Di Giorgio Farms to the plants of purchasers and there established picket lines, which employees of the purchasers declined to cross (R. 137-143).

In presently pertinent part, the complaint before the Board alleged that Farm Union violated Section 8 (b) (4) (A) of the Act by its activity at the premises of the purchasers (R. 110-111). The Board dismissed the complaint against Farm Union, holding that a union composed exclusively of agricultural laborers was not a labor organization in the statutory sense subject to the restraints of Section 8 (b) (4) (A) of the Act (R. 175, 179, 145-152). Upon petition to review the Board's dismissal of the complaint, the court below affirmed the Board (R. 193-197).

ARGUMENT

The Board held that a union composed exclusively of agricultural laborers, denied employee status by Section 2 (3) of the Act, was not a labor organization within the meaning of Section 2 (5)

of the Act, and was therefore not subject to the restraints imposed upon such organizations by Section 8 (b) (4) (A) of the Act. In reaching this conclusion the Board relied upon (1) the interrelated definitions of Section 2 (3) and (5) of the Act which expressly remove unions of agricultural workers from the statutory prohibitions placed on labor organizations; (2) the internal structure of Section 8 (b) of the Act, which is incompatible with an assumption that agricultural unions are within its regulatory scope; and (3) the over-all purpose of the Act, which was to create equality of correlative privileges and obligations (R. 175, 145-152). In affirming the Board, the court below observed that in these circumstances to give the term "labor organization" an "undefined meaning" in order to reach agricultural unions "would simply be rewriting the statute" (R. 196).

1. In six subsections, Section 8 (b) of the Act spells out the type of activity in which "It shall be an unfair labor practice for a labor organization or its agents" to engage. "When used in this Act," Section 2 (5) defines as a "labor organization" any organization "in which *employees* participate" (Italics added). Section 2 (3) excludes from its definition of "employee" "any individual employed as an agricultural laborer." By its terms, therefore, a union of agricultural laborers is not a "labor organization" for no "employees," in the statutory sense, participate in it. Such a

union is, accordingly, outside the scope of Section 8 (b) (4) (A) of the Act.

These definitions are obviously controlling, for they were devised for the express purpose of identifying the class of unions which Congress intended to subject to the regulation of Section 8 (b). Thus, Section 2 (3) of the Act was amended in 1947 to exclude from the term "employee" "any individual employed by an employer subject to the Railway Labor Act." Employers subject to the Railway Labor Act had never been covered by the National Labor Relations Act, since as originally enacted such carriers were excluded from the term "employer" by Section 2 (2). Therefore, the purpose of amending the definition of "employee" to exclude railway workers was not to establish the already existing immunity of carriers; its purpose was to "make it perfectly clear" that *railway unions* were not to be subjected to the regulations contained in the amended Act. S. Rep. No. 105, 80th Cong., 1st Sess., 19; 93 Cong. Rec. 6498. To accomplish this exemption of railway unions Congress chose the device of exempting railway workers from the term "employee." The reasonable inference to be drawn from the identical exemption of agricultural laborers is that their unions are similarly exempt.[1]

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[1] This appears to be the uniform conclusion of responsible commentators: Teller, *Labor Disputes and Collective Bargaining* (1950 Supp.), Sec. 398.33; Witney, *Agricultural Workers under National Labor Relations Laws*, Institute of Labor and

2. The internal structure of Section 8 (b) discloses that a labor organization of agricultural laborers is outside its scope. The term "a labor organization or its agents," in the preamble to all of Section 8 (b), is the single phrase which defines those unions which are subject to the prohibitions of the succeeding six unfair labor practices. By far most of these practices are by their terms incapable of application to a union of farm workers. Thus, with respect to the organizational activity of Farm Union among its members and their co-workers employed at Di Giorgio Farms, none of whom are "employees" because of their status as "agricultural laborers," Farm Union cannot, in violation of Section 8 (b) (1) (A), "restrain or coerce employees in the exercise of the rights guaranteed them in section 7." Agricultural laborers are guaranteed no rights under Section 7, and just as Fruit Corporation is not subject to the prohibitions against interference with them, neither is Farm Union. Nor, for the same reason, could Farm Union with respect to agricultural workers "cause

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Industrial Relations, University of Illinois Bulletin, March 1948, pp. 5, 29; Van Arkel, *An Analysis of the Labor Management Relations Act, 1947*, Practising Law Institute (1947), p. 2; Wollett, *Labor Relations and Federal Law* (1949) 33 (supervisors); see also Interim Report of Special Subcommittee of House Committee on Education and Labor to investigate labor practices in the food industry, 80th Cong., 2d Sess., Committee Rep. No. 8, p. 9: "While labor unions cannot, under the Taft-Hartley Act, file charges against farmers with the National Labor Relations Board, neither can farmers secure protection or redress from the Board or the courts when they are in jeopardy or have suffered damages."

an employer to discriminate against an employee" in violation of Section 8 (b) (2), just as Fruit Corporation cannot be held responsible for discrimination. So too, since it is not and cannot be "the representative of his employees subject to the provisions of section 9 (a)" (Section 8(b)(3)), Farm Union could not refuse to bargain collectively with Fruit Corporation in violation of Section 8 (b) (3), just as Fruit Corporation cannot be required to bargain with Farm Union. And, since its membership is composed solely of agricultural laborers, Farm Union could not violate Section 8 (b) (5) by requiring of "employees" the payment of an excessive or discriminatory initiation fee, as provided therein.

Accordingly, the internal inconsistencies revealed by an attempt to apply the restrictions of Section 8 (b) to Farm Union confirm the conclusion drawn from the definitions, namely, that a union composed exclusively of farm workers is exempt from Section 8 (b). Thus, apart from Section 8 (b) (4), the other unfair labor practices listed clearly have no application to a union of farm workers. Indeed, even as to Section 8 (b) (4), subsections (C) and (D) and the proviso are in terms incapable of reference to argicultural unions. Petitioners' contention must be, therefore, that with respect to 8 (b) (4) (A) and (B), but nothing else in 8 (b), the term "labor organization" in the preamble abruptly acquires a differ-

ent meaning for the purpose of embracing otherwise exempt farm unions. But there is nothing shown in the text or pattern of the statute to justify giving two meanings to the same term used in the same section for the same purpose of defining the coverage of a single, unified and related set of prohibitions. As the court below concluded (R. 197), "the section conferring benefits (Section 8 (a)) and the section imposing restrictions (Section 8 (b)), which are subdivisions of the same section of the Act, must be construed in harmony; and . . . if they be construed to apply to organizations of agricultural laborers, they would nullify the exclusion of such laborers from the statutory definition of 'employees'."

3. The exempt status of Farm Union is in harmony with the purpose underlying the amendments of the Act. The proponents of the 1947 amendments repeatedly stated their aim to be the establishment of an equality of rights and duties between labor unions and management.[2] Having in 1935 granted rights of self-organization and collective bargaining to employees and their organizations and imposed corresponding obligations upon employers, Congress in 1947 amended the Act to require the labor organizations to which it gave assistance to abstain from the activities which it found harmful and set out in Section 8 (b). As

[2] H. Rep. No. 245, 80th Cong., 1st Sess., 8, 31; S. Rep. No. 105, 80th Cong., 1st Sess., 2; 93 Cong. Rec. 3835, 4436. 4437, 6441.

it said in amending its "Findings and Policies" by the addition of the fourth paragraph to Section 1 of the Act:

> The elimination of such practices is a necessary *condition* to the assurance of the *rights* herein guaranteed. [Emphasis supplied.]

Thus, in consideration of its grant and protection of "rights" exercised by employees and their unions, Congress required such unions to fulfill the "conditions" of fair union conduct.

To subject agricultural laborers and their unions to the restraints of the amended Act, while at the same time denying them its assistance, runs into direct conflict with the Act's overall purpose of establishing equality between labor and management. In 1935, Congress excluded agricultural workers from the term "employee" so that such workers and their unions secured no benefits from the Act. To attain self-organization and collective bargaining they could look only to their economic power, and they achieved little success by this method.[3] In 1947, Congress left them exactly as they had been before. They still received no bene-

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[3] In relation to other workers protected by the NLRA, statistics graphically show both, (1) the lack of organizational growth of unions of farm workers denied statutory benefits, and (2) the consequent minute nature of any problem presented by their efforts to organize. In 1946, one year before the amendment of the NLRA, about "14.8 million workers were employed under conditions determined by written collective-bargaining agreements" and they represented "48 percent of the 31 million engaged in occupations in which the unions have been organizing and endeavoring to obtain written agreements." U. S. Dept. of Lab., Bur. of Lab. Stat., Bull.

fits from the Act, but they were likewise to be subjected to no curbs, in harmony with the overall purpose of the Act. Thus, as the court below observed (R. 197), "it seems indisputably clear that Congress did not intend to include within either the benefits or the restrictions of the Act organizations composed exclusively of agricultural laborers."

Indeed, to have subjected unions of farm workers to the prohibitions of Section 8 (b) (4) (A) would not merely have disrupted the equality of immunity which the Act contemplates; it would in fact have placed such unions in an inherently worse position than those labor organizations which are concededly subject to the Act. Labor organizations subject to the Act, which are certified as bargaining representatives, may have the aid of secondary pressure by other unions to enforce their demand to bargain (Section 8 (b) (4) (B) of the Act); unions of farm workers, since they are denied the opportunity of certification, can never have such assistance, as the facts of this case show (R. 162-166). Labor organizations subject to the Act, which are majority representatives of employees that the employer is required to recog-

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No. 909, *Extent of Collective Bargaining and Union Recognition 1946*, 1. Of the 31 million workers, about 2,148,000 were hired farm workers (U. S. Bur. of Cens., *Statistical Abstract of the United States: 1949*, (Seventieth Edition) Washington, D. C., 1949, 198), of whom less than 1 percent in 1946 worked under union agreements (U. S. Dept. of Lab., *op. cit.*, at 2 and n. 1). Thus, in contrast with the over-all average of 48 percent, less than 1 percent of farm workers were employed under union contracts.

nize, may have whatever immunity is granted by the proviso contained in Section 8 (b) (4); unions of farm workers, since they are never required to be recognized, can never enjoy the advantages of such immunity. It is hardly possible to attribute to Congress the purpose of placing unions of farm workers in such a permanently inferior position in their relationship to employers of agricultural labor, particularly where, as here, such employers engage as many as 1,500 workers in their operations.

4. Insofar as the purpose of Congress can be discerned from the legislative history, the explanation of Senator Taft,[4] the colloquy on the Senate floor,[5] and the testimony adduced at the hearings before the House and Senate committees,[6] show clearly that Congress was not concerned with the farmers' difficulty with the secondary boycotts of unions composed of agricultural laborers. Rather, its expressed concern was with secondary pressure by unions composed of handlers, truckers, processors and the like. Such handlers, truckers, and processors are unquestionably "employees" within the meaning of the Act, and their unions are unquestionably "labor organizations" now subject

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[4] 93 Cong. Rec. 4867.

[5] 93 Cong. Rec. 4860-4868.

[6] Hearings before the House Committee on Education and Labor, 80th Cong., 1st Sess., on Amendments to the National Labor Relations Act, pp. 719, 724, 1803, 1840, *et seq.*, 1912 *et seq.*; Hearings before the Senate Committee on Labor and Public Welfare, 80th Cong., 1st Sess., on Labor Relations Program, pp. 494 *et seq.*, 1636 *et seq.*, 1644 *et seq.*

to Section 8 (b) (4) (A). As the facts of this case show (R. 159-166), Fruit Corporation secured appropriate relief against secondary boycotts by unions of teamsters and wine workers, and the congressional purpose was thus fulfilled. But, as the court below observed (R. 195, 197), the fact that Congress drew a statute to protect the farmer against the secondary activity of nonagricultural unions hardly indicates that Congress intended to proscribe the activity of farm workers who are themselves denied statutory protection. In these circumstances, where Congress has not expressed an unmistakable policy preference capable of effectuation within the present statutory scheme, the court below concluded that the "ultimate problem whether secondary boycotts by agricultural laborers should be forbidden is for the Congress and not for the courts" (R. 197).

5. The decision below does not conflict with this Court's decision in *Phelps-Dodge Corp.* v. *National Labor Relations Board,* 313 U. S. 177, as the court below explained in detail in concluding that the *Phelps-Dodge* "opinion does not determine the problem now before us" (R. 195). In *Phelps-Dodge,* this Court held that the authority of the Board "to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act," contained in Section 10 (c) of the Act, was not restricted to employees who have "not obtained any other regular and substantially equivalent

employment," a qualification appearing in the definition of the term "employee" in Section 2 (3) of the Act. This Court reasoned that, (1) the authority of the Board to order reinstatement of employees was not derived from and was not limited by the participial phrase "including reinstatement of employees with or without back pay" (313 U. S., at 191, 187-189); (2) the qualification pertaining to "equivalent employment" was not a "specific delimiting provision" of the general class of "employees" (313 U. S., at 192); and (3) to deny the Board power to order the reinstatement of employees who had obtained other employment would be destructive of the policy of the Act to neutralize discrimination (313 U. S., at 192-194).

The court below pointed out that "the same process of reasoning" does not apply "to the problem now before us" (R. 195). First, the exemption of agricultural laborers is a "specific delimiting provision" of the general class of "employees"; second, this specific delimitation appears in the "same section of the statute" defining "labor organization," and unlike the reinstatement provision, the relationship is not between "two different sections dealing with different topics" (R. 195); and third, unlike the policy of undoing discrimination by reinstatement, there is in this case no discernible statutory policy favoring prohibition of secondary activity by unions composed of agricultural laborers.

Accordingly, it hardly follows that because the term "employee" is used in an unrestricted sense in Section 10 (c) it is likewise unqualified when used in Section 2 (5) to define a labor organization in its relationship to Section 8 (b). *Phelps-Dodge* does not stand for the proposition that a statutory definition is inserted in a statute only to be ignored.[7] It is ordinarily the single most reliable guide to statutory meaning, and as applied in this case, its utilization is corroborated by text, context, and history.

6. There is no conflict between the decision below and the unreviewed portion of the decision of the Court of Appeals for the Fifth Circuit in *International Rice Milling Co.* v. *National Labor Relations Board,* 183 F. 2d 21, 24-26 (C. A. 5), upon which certiorari was not sought by the Board. *National Labor Relations Board* v. *International Rice Milling Co.,* 341 U. S. 665, 668, n. 2. In the unreviewed part of *International Rice,* unlike the present case, the offending union was unquestionably a "labor organization" within the meaning of the Act, and the only issue was whether railroad employees were "employees of any employer" within the meaning of Section 8 (b) (4) (A) and (B) of the Act whom such unions are forbidden to

[7] For example, petitioners would insist upon qualifying the term "employees" as used in Section 8 (a) of the Act by the exclusion of agricultural laborers set forth in the statutory definition. If the statutory definition suffices to deny agricultural laborers the benefits of the Act, by parity of reasoning it suffices to free them of its limitations.

induce to withhold services. In holding that they were, the Fifth Circuit reasoned that Congress had intentionally used the phrase "employees of *any* employer" in Section 8 (b) (4) in order to extend the sweep of that section beyond the limited definition accorded *an* "employer" in the Act. (183 F. 2d, at 25.) But of critical importance to the present question, the Fifth Circuit made clear that unions of railroad workers, themselves excluded from the Act, are not subjected to its restrictions. As the Court said (183 F. 2d, at 25): "There is no doubt that Congress intended to exclude railroad companies and their employees from the National Labor Relations Act in so far as the regulation of labor relations was concerned. * * * Section 8 (b) (4) of the National Labor Relations Act, as amended in 1947, as applied to this case, does not seek to enter the field of railway labor relations. Petitioners are not asking that anything be done to railroad companies or their employees, or that they be compelled to do anything."

Accordingly, the court below and the Fifth Circuit reached identical conclusions on the analogous issue of whether unions composed of workers excluded from the status of employees are subject to the Act, the court below holding that agricultural unions were exempt from regulation under the Act and the Fifth Circuit stating that railway unions were similarly exempt. Thus, far from being in conflict, the decision below is in accord with the decision of the Fifth Circuit. Petitioners im-

plicitly recognize this, for while claiming a conflict between the two decisions, they express dissatisfaction with the opinion of the Fifth Circuit. (Pet. 25.)

7. The insignificant incidence of strikes in agriculture from 1944 to 1950 shows the relative unimportance of the question presented. The inconsiderable number of work stoppages among farm workers is even more marked than the statistics show, for the available statistics pertain to "agriculture, forestry, fisheries, and related services," a much wider category than exclusively agricultural labor.[8] Furthermore, in comparison with industry generally, work stoppages in agriculture are minute indeed. The statistics show as follows:

Year	Number of Stoppages		Number of Workers Involved	
	Agriculture Forestry and Fishing	All Industry	Agriculture Forestry and Fishing	All Industry
1944[a]	18	4,956	9,851	2,115,637
1945[a]	20	4,750	5,000	3,467,000
1946[a]	28	4,985	17,500	4,600,000
1947[a]	22	3,693	12,200	2,170,000
1948[a]	23	3,419	23,100	1,960,000
1949[b]	24	3,606	18,300	3,030,000
1950[c]	12	4,843	20,700	2,410,000

[a] Bureau of the Census, U. S. Dept. of Commerce, *Statistical Abstract of the United States*, 1950, U. S. Gov't. Print. Off., Wash., D. C., 1950, p. 209, Table 252.

[b] U. S. Dept. of Labor, *Monthly Labor Review*, May, 1950, U. S. Gov't. Print. Off., Wash., D. C., 1950, p. 504, Table 4.

[c] U. S. Dept. of Labor, *Monthly Labor Review*, May, 1951, U. S. Gov't. Print. Off., Wash., D. C., 1951, p. 521, Table 4.

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[8] Bureau of the Budget, Executive Office of the President, *Standard Industrial Classification Manual*, Vol. II, U. S. Gov't. Print. Off., Wash., D. C., May, 1949, p. 7.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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OCTOBER, 1951.

APPENDIX

The relevant provisions of the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. IV, 141, *et seq.*), are as follows:

* * * * *

"DEFINITIONS

SEC. 2. When used in this Act—

* * * * *

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent em-

ployment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

* * * * *

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

* * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring member-

ship in a labor organization as a condition of employment as authorized in section 8 (a) (3).

* * * * *

UNFAIR LABOR PRACTICES

SEC. 8 (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization:

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his

representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a);

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organiza-

tion has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: *Provided,* That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act;

(5) to require of employees covered by an agreement authorized under subsection (a) (3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organiza-

tions in the particular industry, and the wages currently paid to the employees affected; and

(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

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